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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of Rahman Nader Ghadimi  
and Guity Ghadimi.

RAHMAN NADER GHADIMI,

Appellant,

v.

GUITY GHADIMI,

Respondent.

B226688

(Los Angeles County  
Super. Ct. No. BD483214)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Frederick C. Shaller, Judge. Affirmed.

Buter, Buzard, Fishbein & Royce and Glenn S. Buzard for Appellant Rahman  
Nader Ghadimi.

Cuneo & Hoover and J. Nicholas Cuneo for Respondent Guity Ghadimi.

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This appeal arises out of a marital dissolution proceeding between husband Rahman Nader Ghadimi and wife Guity Ghadimi.<sup>1</sup> Nader appeals an order modifying pendente lite spousal support to Guity on the sole ground that the trial court improperly attributed as income to Nader a cash distribution that he was paid by his business. Nader contends that such payment was not income, but rather was a non-income “return of capital.” Because the trial court acted within its discretion in fashioning a temporary spousal support order based on Guity’s need and Nader’s ability to pay, we affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Nader and Guity were married in 1994 and separated in 2008. Nader filed a petition for dissolution of the marriage in April 2008. There are no children of the marriage, but Nader and Guity each have two children from prior relationships. At the time of separation, Nader’s children were ages 26 and 23, and Guity’s children were ages 18 and 16. Prior to their separation, Nader primarily was involved in the commercial real estate business, and Guity was a stay-at-home wife and mother. The couple maintained a lavish lifestyle throughout their marriage.

Nader is the sole owner and chief executive officer of Emerald Management, a company that manages commercial real properties in which Nader has an ownership interest. Through Emerald Management, Nader receives property management and maintenance fees, as well as commission and consulting fees from the sale and purchase of commercial real estate. In 1996, Nader formed the Ghadimi Family Limited Partnership (GFLP) to which he transferred a number of the commercial real properties that he owned. According to Nader, he formed the GFLP to segregate the properties that he owned prior to his marriage to Guity, and to set up a trust for the benefit of his two adult children. Nader currently holds a 61 percent interest in the GFLP, and the Ghadimi

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As is customary in dissolution proceedings, we refer to the parties by their given names for clarity of reference, and not out of disrespect. (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 46, fn. 1.)

Irrevocable Children's Trust holds the remaining 39 percent interest. Nader also holds a majority interest in other limited liability companies and partnerships which own commercial real properties. Through these entities, Nader receives cash distributions from the various real estate investments in which he has an ownership interest.

In May 2008, Guity filed an Order to Show Cause for pendente lite spousal support. Among other relief, Guity requested that Nader be ordered to pay \$35,000 per month in spousal support during the pendency of the dissolution proceedings. Nader argued that the amount of support should be limited to \$27,177 per month based on Guity's needs and Nader's projected gross monthly cash flow of \$58,334. In ruling on the request for temporary spousal support, the trial court rejected the cash flow analysis proffered by Nader's forensic accountant as "speculative" and "not reflective" of Nader's actual income. The court found that, based on Nader's average income between 2003 and 2007, his gross monthly income available for support was \$151,417. However, the court also found that Guity's proposed living expenses were "embellished" and "unreasonable" to maintain her marital standard of living, and that her reasonable monthly expenses were \$23,178. Adjusting for taxes, the court ordered Nader to pay temporary spousal support to Guity in the amount of \$35,000 per month until the death of either party, Guity's remarriage, or further order of the court.

In February 2010, Nader filed an Order to Show Cause for modification of the pendente lite spousal support order. Nader requested that the trial court reduce the amount of spousal support to Guity on the ground that, due to the economic downturn in the real estate market, Nader's income in 2009 was substantially less than his average annual income from 2003 to 2007 on which the prior order was based. In support of his request, Nader's forensic accountant provided an updated cash flow analysis based on Nader's income in 2009. In calculating Nader's 2009 income, the accountant did not include the full amount of cash distributions paid to Nader by the GFLP and other partnerships, but rather limited the amount of such distributions to the annual "pass-through" or "net income" reported by those entities. The accountant explained that, to the extent Nader "received distributions in excess of the 2009 net income, those

distributions were deemed to be a return of capital or prior years['] net income.” In 2009, Nader was paid a total of \$414,105 in cash distributions from the GFLP, which included \$88,500 in pass-through income.

Guity opposed Nader’s request for a reduction in spousal support. In support of her position, Guity’s forensic accountant provided a competing cash flow analysis of Nader’s 2009 income. As set forth by Guity’s accountant, the GFLP reported a total income of \$775,841 in 2009. In addition to the \$414,105 cash distribution that the GFLP paid to Nader based on his 61 percent ownership interest, Nader also received a loan from the GFLP in the amount of \$491,292. Guity’s accountant reasoned that, because Nader had effectively drawn all of the income earned by the GFLP in 2009, 100 percent of the GFLP’s income should be attributed to Nader for purposes of calculating his available cash flow. The accountant also opined that, even if the court only considered Nader’s 61 percent ownership interest in the GFLP in determining his income, it was improper to limit the calculation of his income from the GFLP to pass-through or net income. As the accountant explained, it was customary for owners of real estate holding companies like the GFLP to receive cash distributions well in excess of the reported net income due to the large depreciation deductions that could be claimed by such entities. Additionally, none of Nader’s financial records reflected that any portion of the cash distributions paid to him in 2009 was a return of capital. Based on the cash flow analysis proffered by her accountant, Guity argued that Nader’s gross monthly cash flow available for support was \$106,411, and that Guity’s spousal support should be increased to \$52,815 per month.

On June 18, 2010, the trial court issued a modified statement of decision on the matter.<sup>2</sup> While noting that Nader’s income was a “complicated matter” involving numerous issues, the court found that, due to the economic downturn over the past few years, the most predictive income information for purposes of assessing Nader’s ability to pay spousal support was the “income information for the year 2009, the last full year of

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<sup>2</sup> The trial court issued its original statement of decision on May 21, 2010, and thereafter modified its decision based on objections filed by both parties.

data available.” Based on Nader’s 2009 income information, the court found that the cash distributions paid to Nader by the GFLP and other entities should be considered in setting the amount of temporary spousal support owed to Guity. The court reasoned that, irrespective of Nader’s characterization of such payments as a non-income “return of capital,” the distributions reflected additional cash flow to Nader that affected his ability to pay. However, the court rejected Guity’s attempt to attribute to Nader 100 percent of the GFLP’s 2009 income since Nader only held a 61 percent ownership interest in the GFLP and was accountable to the owner of the remaining 39 percent interest for any distributions that were made. The court also rejected Guity’s attempt to include as income to Nader the amount that he had borrowed from the GFLP because the record reflected that it was a bona fide loan with an obligation to repay.

Accordingly, with respect to the \$414,105 cash distribution that the GFLP paid to Nader in 2009 based on his 61 percent ownership interest, the court decided to treat the \$88,500 in pass-through income as part of Nader’s monthly gross income, and to treat the balance of \$325,605 (\$414,105 minus \$88,500) as a type of one-time bonus. In so doing, the court made clear that it was not finding that the cash distribution from the GFLP was an actual bonus, but rather was treating a portion of the distribution as if it were a bonus for purposes of calculating temporary spousal support. The court reasoned that such treatment was the “fairest way to reach an amount of support” given the “unusual circumstances of this case.” As calculated by the trial court, Guity was entitled to 38.91 percent of the \$325,605 balance, or \$126,693. In addition to base spousal support, the court ordered Nader to pay Guity this sum of \$126,693 over a 12-month period in installments of \$10,558 per month (\$126,693 divided by 12 months).

After considering the totality of Nader’s 2009 income information, the trial court also found that Nader’s gross monthly income available for spousal support was \$37,227. Based on that figure, the court calculated Guity’s base spousal support award to be \$14,481 per month. The court thus ordered Nader to pay temporary spousal support in the amount of \$25,039 per month (\$14,481 in base support plus an additional payment of \$10,558 from the GFLP’s distribution) for a period of 12 months, and then \$14,481 per

month until the death of either party, Guity's remarriage, or further order of the court. Following the trial court's modified order for pendente lite spousal support, Nader filed a timely notice of appeal.

## DISCUSSION

In his appeal, Nader solely challenges the portion of the pendente lite spousal support order that awarded Guity \$10,558 per month over a 12-month period based on the \$325,605 cash distribution that the GFLP paid to Nader in 2009. Nader specifically contends that the trial court erred in treating the distribution as a "bonus" or "income," rather than as a non-income return of capital. Based on the record before us, however, we conclude that the trial court did not abuse its discretion in setting the amount of temporary spousal support.<sup>3</sup>

Under Family Code section 3600, a trial court has the authority to order temporary spousal support while a marital dissolution proceeding is pending. (Fam. Code, § 3600 ["During the pendency of any proceeding for dissolution of marriage . . . the court may order [] the husband or wife to pay any amount that is necessary for the support of the wife or husband, . . . as the case may be."].) The purpose of temporary spousal support is "to maintain the living conditions and standards of the parties in as close to the status quo position as possible pending trial and the division of their assets and obligations." [Citations.]” (*In re Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1932.) In setting the amount of temporary spousal support, the trial court “is not restricted by any set of

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<sup>3</sup> In her respondent's brief, Guity argues that the trial court erred in failing to attribute 100 percent of the GFLP's total income to Nader for purposes of calculating spousal support because Nader has control over the entire entity and all of its cash flow. However, because Guity did not file a cross-appeal, she has no standing to ask this Court for any affirmative relief. (See *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 ["As a general matter, 'a respondent who has not appealed from the judgment may not urge error on appeal.'"]; *Building Industry Assn v. City of Oceanside* (1994) 27 Cal.App.4th 744, 758, fn. 9 [A respondent generally “must file its own notice of appeal in order to obtain affirmative relief by way of appeal.”].)

statutory guidelines.” (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327; see also *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 312 [“there are no explicit statutory standards governing temporary support”].) “Rather, in exercising its broad discretion, the court may properly consider the ‘big picture’ concerning the parties’ assets and income available for support in light of the marriage standard of living. [Citation.]” (*In re Marriage of Wittgrove, supra*, at p. 1327.)

An award of temporary spousal support generally is “based on ‘a showing of two conditions: the moving party’s needs, and the other party’s ability to pay.’” (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 159; see also *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 594 [temporary spousal support may be ordered in any amount “subject only to the moving party’s needs and the other party’s ability to pay”].) “Ability to pay encompasses far more than the income of the spouse from whom temporary support is sought,” and thus, “investments and other assets may be used for . . . temporary spousal support.” (*In re Marriage of Dick, supra*, at p. 159.) In addition, the trial court “may properly look to the parties’ accustomed marital lifestyle as the main basis for a temporary support order. [Citations.]” (*In re Marriage of Wittgrove, supra*, 120 Cal.App.4th at p. 1327.)

“Subject only to the general ‘need’ and ‘the ability to pay,’ the amount of a temporary spousal support award lies within the court’s sound discretion, which will only be reversed on appeal on a showing of clear abuse of discretion. [Citation.]” (*In re Marriage of Wittgrove, supra*, 120 Cal.App.4th at p. 1327.) “Generally, ‘the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.]’ [Citation.] To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld ‘as long as its determination is within the range of the evidence presented. [Citation.]’ [Citation.]” (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.)

Applying these principles, we conclude that the trial court acted within its broad discretion in considering the 2009 cash distribution that Nader received from the GFLP as part of his ability to pay temporary spousal support to Guity. As discussed, a trial

court's discretion in ordering temporary spousal support is circumscribed only by the moving party's needs and the other party's ability to pay. (*In re Marriage of Dick, supra*, 15 Cal.App.4th at p. 159; *In re Marriage of Murray, supra*, 101 Cal.App.4th at p. 594.) Because a party's "ability to pay" encompasses assets as well as income, it is entirely "proper for the court to look to assets controlled by [the supporting party], other than income, as a basis for the award [of spousal support.]' [Citation.]" (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at pp. 304-305.) The court also may "look past the apparent form of ownership in which [the party's] assets were held to determine the extent of [the party's] true interest in them and the availability of those assets in assessing [the party's] ability to pay. [Citation.]" (*In re Marriage of Dick, supra*, at p. 162.)

Here, the trial court acknowledged that the complexity of Nader's business interests made it difficult to determine his actual 2009 income. However, the court found that, irrespective of Nader's characterization of the cash distributions that he received, those distributions were "cash flow that affects [Nader's] ability to pay support." As the trial court further explained: "Since these payments from GFLP clearly enhanced the ability of [Nader] to pay support, the court considers it fair to use these sums in some manner to fashion a temporary support figure as it impacts favorably on [Nader's] ability to pay support. If the court did not consider these distributions in reaching an award of temporary support, [Guity] would not be able to receive support consistent with the parties' accustomed high marital standard of living pending trial." Accordingly, in modifying the amount of temporary spousal support, the trial court properly considered "the 'big picture' concerning the parties' assets and income available for support in light of the marriage standard of living." (*In re Marriage of Wittgrove, supra*, 120 Cal.App.4th at p. 1327.)

Nader argues that the trial court erred in treating a portion of his cash distribution from the GFLP as a "bonus" when there was no evidence that such distribution was in the nature of a bonus as payment for services rendered. Nader also claims that, by treating the distribution as a "bonus," the trial court improperly calculated future spousal support based on a prior bonus payment that may not recur. However, the trial court made clear

in its final statement of decision that it was not finding that any portion of the cash distribution paid by the GFLP in 2009 was an actual “bonus” to Nader. Rather, the trial court decided to treat a portion of the distribution “as if [such] payments were a bonus [] for purposes of using the DissoMaster program to set a fair amount of temporary spousal support.”

The DissoMaster program is a computer program that enables the court to calculate support. (*In re Marriage of Carter* (1994) 26 Cal.App.4th 1024, 1027, fn. 3.; *In re Marriage of Wittgrove, supra*, 120 Cal.App.4th at pp. 1327-1328.) The judge may make adjustments to the calculations to accommodate circumstances. In this case, Nader received cash distributions from various real estate holding companies in which he had a controlling interest, and at times, the distributions far exceeded the reported net income of those entities. In fact, it was precisely because the trial court found that this type of distribution was unlikely to recur in the future that the court decided to treat it like a one-time bonus rather than as part of Nader’s gross monthly income on which the base spousal support award was made. As the trial court noted, it was “making an accommodation to the unusual circumstances of this case to allow for a fair payment of support to [Guity] based on [Nader’s] ability to pay.” The trial court properly adjusted its use of the DissoMaster program to address the unique circumstances of the GFLP’s cash distribution.

Nader also asserts that the trial court erred in treating the entirety of his cash distribution from the GFLP as “income” when his forensic accountant represented that any amount in excess of the GFLP’s reported net income was a non-income return of capital. In support of this argument, Nader notes that neither the California Family Code nor the federal Internal Revenue Code defines “income” as including cash distributions in excess of the distributive share of a partnership’s gross income. However, the trial court never determined that the amounts paid to Nader in excess of the GFLP’s net income constituted “income” to Nader for purposes of calculating temporary spousal support, but instead determined that regardless of how such distributions were

characterized, they reflected additional cash flow to Nader that should be considered in determining his ability to pay.

Moreover, even assuming that the trial court had made a factual determination that the entirety of the GFLP's 2009 cash distribution to Nader was "income," there were conflicting opinions from the parties' forensic accountants about whether such amounts should be treated as income to Nader because he exercised control over the form in which the distribution was made. "[I]n the face of an ambiguity as to whether disputed sums represent income available for support, that determination is committed to the court's discretion." (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1448.) We see no abuse of discretion in the trial court's treatment of the distributions in this case.

Finally, Nader contends that the portion of the spousal support award that is based on the GFLP's 2009 cash distribution constitutes a "double payment" of support. In making this argument, Nader notes that, since August 2008, he has been paying spousal support to Guity in the amount of \$35,000 per month in accordance with the trial court's July 2008 spousal support order. Nader thus reasons that he already has paid Guity support for 2009 based on the income that he received in 2009, including the cash distribution from the GFLP. We disagree. When the trial court issued its original support order in July 2008, the GFLP's 2009 distribution had not been made to Nader, and therefore, could not have been considered income to him at that time. Furthermore, the prior support order was not based on Nader's projected income for 2009, but rather was based on his average annual income from 2004 to 2007. Under these circumstances, the trial court's June 2010 order modifying the amount of spousal support going forward did not result in a double charge.

In sum, because the trial court properly considered Nader's ability to pay in calculating temporary spousal support, its June 2010 order modifying the amount of spousal support owed to Guity was not an abuse of discretion.

**DISPOSITION**

The trial court's June 18, 2010 order for pendente lite spousal support is affirmed.  
Guity shall recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.